other states, including New York. *In re Griffin's Will*, 167 N. Y. 71. In general, equity never permits a trust to fail for want of a trustee, (EATON, EQUITY, p. 358,) and particularly one of a charitable character. REDF. WILLS, Ed. 2, 805. Trustees have been appointed for indefinite charitable trusts in the following cases, *Howard* v. *American Peace Society*, 49 Me. 288; *Williams* v. *Pearson*, 38 Ala. 299; *McCord* v. *Ochiltree*, 8 Blackf. 15. There the principles of the English equity jurisprudence have been held incorporated into the local chancery practice without the necessity of the prerogative power. In *Williams* v. *Pearson, supra,* the court states that it is no objection to the validity of the trust that the donor has appointed no trustee or that the one appointed is incapable of taking. Upon the facts of the case it would seem that the testator must have intended that the county or city officials should have the duty of administering the trust, as it is provided that one or the other must agree to support the institution. The court held that the county supervisors had no power to make such an agreement, but its decision of course destroyed all chance of the city officials complying with the condition.

COMMERCE—INTERSTATE COMMERCE—CONTINUOUS SHIPMENT—VIOLATION OF ELKINS ACT.—A cargo of sugar was shipped from Hamburg, Germany, destined, as the bill of lading stated, "to Philadelphia for transportation in bond to Raymond, Alberta," Canada, and it was taken to its destination by continuous and uninterrupted transportation at the hands of successive carriers. The cargo was transported across the northeastern and northern part of the United States by railroad and water carriers. The defendant railway company carried it over part of the route at a less rate than would have been lawful if the shipment had originated at Philadelphia. In fact the rate charged in this case was scarcely more than half the rate established, published and filed, in compliance with the Elkins Act (Act Feb. 19, 1903, c. 708, 32 Stat. 847, [U. S. Comp. St. Supp. 1909, p. 1138]), for shipments originating at Philadelphia. It was the charging of this rate which was alleged to be a criminal offense. *Held,* that the said Elkins Act concerning interstate commerce did not apply to such a shipment, because there was no delivery or change of title within the United States and the different carriers were merely assisting in a continuous transportation from one foreign country to another. The Court said, "such a transaction is not within the mischief which the act was intended to remedy, and it certainly does not seem to be within the language of the statute." *United States* v. *Philadelphia & R. Ry. Co.* (D. C., E. D. Pa. 1911) 188 Fed. 484.

The cases concerning this particular phase of the application of the Elkins Act have been in conflict. The above decision justifies American carriers in discriminating in favor of foreign shipments to foreign consumers, as against American shipments to American consumers. Ocean competition may constitute a dissimilar condition, and circumstances and conditions which exist beyond the seaboard of the United States can be legitimately regarded for the purpose of justifying a difference, in rates charged by railroads, between import and domestic traffic. *Texas & Pac. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, 16 Sup. Ct. 666, 40 L. Ed. 940. But it has been

held that a shipment made from a foreign country to a place in the United States is subject to the terms of the act relating to the posting and publishing of schedules of rates as declared by the interstate commerce act. *Fisher* v. *Great Northern Ry. Co.*, 49 Wash. 205, 95 Pac. 77.

CONSTITUTIONAL LAW—POWER OF JUDICIAL DEPARTMENT—INFRINGEMENT ON EXECUTIVE.—Hurd's Rev. Stat. of Illinois 1909, c. 93, created examining boards in various counties for the examination of miners. The members of this board were to be appointed by the county judges. This was attacked as being an attempt to impose non-judicial duties on the judges. *Held,* it was not unconstitutional, because the legislature was authorized to require such appointments, in that the power of appointing in such cases was ministerial under the Illinois constitution. *People* v. *Evans* (Ill. 1911) 93 N. E. 388.

Most states agree that there cannot be conferred upon the judiciary, the duties of another department. *Houseman* v. *Kent Circuit Judge*, 58 Mich. 364; *Phelan* v. *County*, 6 Cal. 532. But the courts divide as to what constitutes the duty of each department. This is especially true with regard to the power of appointment. Indiana holds that "while the power (*i. e.* to appoint) is intrinsically executive, it may be exercised by a court or by a legislature, as an incidental power of an independent department of the government." *State ex rel. Yancey* v. *Hyde*, 121 Ind. 20. And in regard to the appointment of city commissions, the same court holds that "while the powers conferred by the foregoing acts of the legislature upon judges in this state are not strictly judicial, yet they are not such as belong to either the legislative or executive departments of the state governments, and are, therefore, not within the inhibitions of the constitution." *City of Terre Haute* v. *E. and T. H. Ry. Co.*, 149 Ind. 174; *Board of Commissioners* v. *Moore*, 161 Ind. 426. New Jersey and Alabama hold much the same, declaring that appointment is not exclusive with either branch, being dependent on the constitution in regard to the particular office. *Fox* v. *McDonald*, 101 Ala. 51, 46 Am. St. Rep. 98; *Ross* v. *Freeholders of Essex*, 69 N. J. L. 291, 55 Atl. 310. Under such decisions it becomes necessary in each individual case to determine whether the office or appointment to be exercised under the court's action is connected with any one department of government so as to make the appointment partake essentially of the nature of that department. If it is an office connected with the judiciary in nature, the court may appoint. If not such an office, the act giving the court power is unconstitutional. So in New Jersey, the power to appoint an excise officer was given. But this was clearly not connected with the judiciary in nature. The act was held unconstitutional. *Schwarz, Prosecutor* v. *Mayor et al*, 68 N. J. L. 576, 53 Atl. 214. Another class is represented by Kentucky which allows appointment on the ground that "it would embarrass our government not to allow a blending of powers." The other extreme is supported by a few states which maintain that the power to appoint is not a judicial function. Appointing the board having charge of a jail was held void in Maryland. *Beasley* v. *Rideout*, 94 Md. 641, 52 Atl. 61. And the same as to the appointment of a caretaker for the court house. *Prince George's County* v. *Mitchell*, 97 Md. 330. Massachusetts and Minnesota follow this